

REMARKS

This Application has been carefully reviewed in light of the Final Action mailed June 23, 2006. Applicant respectfully requests reconsideration and favorable action in this Application.

Claims 1-40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kondo, et al. in view of Obuchi, et al. Independent Claims 1, 9, 17, 25, and 33 recite in general the ability to perform either of the steps of selecting one of the first and third signal portions using the first and signal characteristics and combining the first and third signal portions, wherein combining includes adding or averaging the first and third signal portions. By contrast, the Examiner readily admits that the Kondo, et al. patent fails to disclose an ability to perform adding or averaging first and third signal portions as required by the claimed invention. To overcome the deficiencies of the Kondo, et al patent, the Examiner proposes to combine the Obuchi, et al. patent with the Kondo, et al. patent. The portions of the Obuchi, et al. patent cited by the Examiner are directed to an error rate measurement device that measures an error between bits received from base stations and generates a mean error rate between base stations. The error rates determined in the Obuchi, et al. patent are used in selecting a convolution encoded signal output from a plurality of convolution encoders. Thus, the Obuchi, et al. patent fails to disclose adding or averaging of portions of first and second wireless signals received from first and second base transceiver stations in addition to selecting portions of the first and second wireless signals as provided in the claimed invention. The merging of convolution encoded signals into one signal is performed based on a selection process using the error rates

and is not performed by adding or averaging signals as required by the claimed invention. Thus, the Examiner's proposed Kondo, et al. - Obuchi, et al. combination does not have a capability to add or average signal portions from different base stations let alone perform either of the steps of selecting between signal portions or combining signal portions as provided by the claimed invention.

Moreover, Independent Claims 1, 9, 17, 25, and 33 are allowable over the Kondo, et al. and Obuchi, et al. patents because neither reference, alone or in combination, teaches or suggests selecting portions of a signal from different base stations, let alone generating a signal portion using characteristics of the selected signal portions or combinations of the selected signal portions. The Examiner contends that the Kondo, et al. patent teaches selecting the best received frame on a frame-by-frame basis using the error rate and signal level. This contention is incorrect as the subject matter of the Kondo, et al. patent cited by the Examiner is merely directed to selecting one of two signals in their entirety based on either no error or highest reception level if both signals have errors. The only processing operation performed in the Kondo, et al. patent with respect to a signal portion (i.e., a frame) is error detection code. Clearly, applying error detection code to a signal portion is not the same as selecting between signal portions or combining two signal portions as provided in the claimed invention.

In addition, the Examiner states that Applicant's arguments have been considered but are moot in view of the new grounds of rejection. However, the Examiner has merely repeated the previous grounds of rejection verbatim without addressing Applicant's arguments whatsoever. Though the Examiner mentions another prior art patent, this prior art

patent is not used as a basis for the rejection of the claims. If the Examiner wishes to use this other prior art patent to support the rejection of the claims, then Applicant respectfully requests the Examiner to issue a new Office Action clearly detailing the reasons for the rejection of the claims. As it now stands, as pointed out above, the Kondo, et al. and Obuchi, et al. patents are insufficient to support a rejection of the claimed invention. Therefore, Applicant respectfully submits that Claims 1-40 are patentably distinct from the proposed Kondo, et al. - Obuchi, et al. combination.

This Response to Examiner's Final Action is necessary to address the Examiner's characterization of the cited art in support of the rejection to the claims. This Response to Examiner's Final Action could not have been presented earlier as the Examiner has only now provided the current characterization of the cited art.

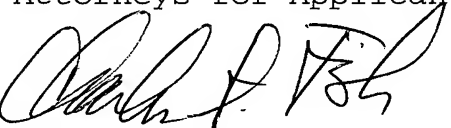
CONCLUSIONS

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending Claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicant stands ready to conduct such a conference at the convenience of the Examiner.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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